

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

JAN 18 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Amendment of the Commission's Rules
Concerning Maritime Communications

Petition for Rulemaking filed by
RegioNet Wireless Licensee LLC

)
) PR Docket No. 92-257 /
)
) RM-9664
)
)
)
)

To: Chief, Wireless Telecommunications Bureau

**Opposition of Regionet Wireless Licensee LLC to
Petition of Warren C. Havens for Reconsideration or Waiver of Interim Order
Regarding Suspension of Processing of Applications**

Regionet Wireless Licensee LLC ("Regionet") respectfully submits this Opposition to the petition of Warren C. Havens ("Havens") seeking reconsideration of the application processing freeze imposed by the Commission in the Fourth Report and Order and Third Further Notice of Proposed Rulemaking ("Fourth R&O and Third FNPRM") adopted by the Commission in the above-captioned rulemaking,¹ or for waiver of said freeze.

I. Statement of Interest

Regionet is a licensee of Automated Maritime Telecommunications Systems ("AMTS") throughout the coastal zones of the United States and serving various inland waterways, including the Mississippi River and its major connecting waterways. Regionet is the largest licensee and operator of AMTS services. Waterway Communications System

¹ FCC 00-370 (Rel Nov. 16, 2000).

No. of Copies rec'd 015
List A B C D E

(“WATERCOM”), which Regionet acquired in 2000, pioneered AMTS service in the United States.

Regionet has a substantial interest in the Third FNPRM. Additionally, Regionet and its parent, Mobex Communications, Inc. have pending before the Commission a number of applications for AMTS authority, many of which have been protested by Havens or are mutually exclusive (MX) with applications filed by Havens.

II. Argument

Havens alleges that waiver of the application processing freeze, and grant of various of his pending applications which do not qualify for processing in accordance with paragraph 78 of the Third FNPRM, would be in the “public interest.”² In fact, the petition filed by Havens is inwardly directed and grossly self-serving; and grant of the relief requested therein would be solely in the private interest of Havens, would serve to undermine the purpose of the freeze, would be prejudicial to Regionet (and possibly others), and would devalue the potential future auctions of AMTS service. Moreover, Havens’ arguments are based upon subjective conclusions with little or no factual support.³

² Petition at 2.

³ In one of the more flagrant statements in the Petition, Havens asserts that he “pioneered inland AMTS for waterways other than principal commercial-barge corridors along the Mississippi and a few associated major tributaries.” Petition at 8. The exclusion obviously refers to the WATERCOM system. Excluding WATERCOM when discussing pioneering of AMTS service is like discussing the greats of baseball after excluding players such as Cobb, Mantle, Mays, Musial and others. Further, Havens ignores the fact that Regionet and Paging Systems, Inc. have been operating AMTS services since the early or mid-1990’s, including service by Regionet to the Columbia River and other inland waterways. Finally, Havens himself notes that he has sought a waiver of the construction deadline for the AMTS license authorities he has been granted. That waiver request discusses an effort yet to be completed to integrate his contemplated AMTS operations with his inland VPC licenses, LMS licenses and 220 MHz licenses. Whatever service Havens contemplates, *if* maritime in nature (other than incidental service to waterborne customers), does not yet exist. To claim that whatever he may have done as having “pioneered” AMTS service only serves to demonstrate how out of touch Havens is with AMTS service.

A. The Geographic Licensing Proposal was Long Anticipated.

Contrary to Havens' claim regarding the lack of "notice,"⁴ in fact, the conversion to geographic area licensing has been anticipated for at least 3 years. Since 1997 the Commission has been moving toward auctioning and geographic licensing for all of the Maritime services. This is well established in the Second Report and Order and Second for the Notice of Proposed Rulemaking in PR Docket No. 92-257,⁵ and in the Third Report and Order in this rulemaking.⁶ The only question was when the Commission would act to implement a geographic area licensing scheme for AMTS.

B. An Application Freeze is Inherent in Changing the Licensing Scheme.

Inherent in the Commission's processes since the institution of auctioning has been the imposition of a licensing freeze. Havens seeks to differentiate AMTS from the VHF public coast station service. This comparison is both facile and irrelevant. Havens contrives a distinction between VHF and AMTS maritime services based on his interpretation of FCC rules and his own alleged business decisions in order to claim an equitable entitlement that ignores the well grounded licensing policies of the Commission on which the freeze is based. In fact, the Commission noted that the licensing freeze "is consistent with the approach we have taken in other existing *services* where we have proposed to adopt geographic area licensing and auction rules."⁷ In addition to the precedent cited by the Commission, the Commission has imposed licensing freezes, for example, in *Paging Systems*,⁸ and in *37.0-38.6-40.0 GHz Bands*.⁹

⁴ Petition at 6.

⁵ 12 FCC Rcd 16949, 17015 (1997).

⁶ 13 FCC Rcd 19853 (1998).

⁷ Fourth R&O and Third FNPRM at ¶ 76 (emphasis added). *See also Id.* at n.264.

⁸ 12 FCC Rcd 2732, 2739 (1997).

⁹ 11 FCC Rcd 4930 (1995).

Any claim of “surprise” by Havens is contrived. Havens took advantage of the window of opportunity provided by the Commission between completion of the VHF maritime proceeding and issuance of the Third FNPRM to secure a number of AMTS licenses. He should not be heard to argue that the opportunity provided by the Commission now should be construed as a “burden” and that he should be relieved from the effects his own actions undertaken in an effort to “beat the clock.”¹⁰

C. The “Need” Asserted by Havens is Not to Further Development of Maritime Services.

Havens asserts a need to obtain a “critical mass” of AMTS service in Central Texas, Central-Sierra Mountain, California, and New England.¹¹ He fails to identify what *maritime* purposes are intended to be served. Rather, Havens proffers a plan to integrate LMS, AMTS, 220 MHz and VPC licenses in what appears to principally entail intelligent highway service operations.¹² Havens’ so-called “critical mass” in New England entails a single station at Bar Harbor, Maine.¹³

To the extent the AMTS is going to be opened for generic commercial mobile service, that must be accomplished through rulemaking. Havens’ proprietary plans, and his desire to secure additional AMTS authorization in furtherance of those plans, are private, not “public interest”, considerations. If the Commission were to waive the “freeze” for Havens, due process considerations demand that it waive the freeze for other applicants as well.

¹⁰ Undoubtedly, if the Third FNPRM has been delayed several months, there would have been other applications for which a similar “need” would have been cited.

¹¹ Petition at 10-11.

¹² *Id* at 11-12 and n.16.

¹³ This application has been protested by Regionet as not being in compliance with the Commission’s AMTS licensing policies. Havens’ instant Petition confirms that the claim to render AMTS service is simply a charade to provide ITS service to the National Park Service.

D. Waiver of the Freeze Would Undermine Fundamental Application Rights.

In postulating his straw-man argument that the application freeze is unfair, Havens then contrives an “either-or” scenario. To avoid completely eviscerating the freeze, due to the potential for a “daisy chain” applications effect,¹⁴ Havens postulates that he “believes that no MX situation . . . would exist with respect to any of the Applications and they would thus fall under this Non-Suspended Category.”¹⁵ Voilà! No one would be interested in competing for the license authorities sought by Havens; therefore, there is no due process problem and the Commission may anoint Havens and confer upon him licenses without regard to MX opportunities. The premises for, and rationality of, Havens’ beliefs are unknown. The record, however, evidences that many of Havens’ applications have been subject to MX filings. The Commission may not simply suppose-away the application rights of third parties.

E. Havens’ Other Two Stations are Subject to the Application Freeze.

Havens further argues that the Keota and Boulder applications should not be subject to the applications freeze. With regard to the Keota station, Havens alleges that the application was misplaced and that otherwise “it would have been off Public Notice” with other applications prior to the freeze date. For whatever reason, the application was not placed on Public Notice at an earlier date; and Section 309 of the Communications Act simply does not permit the relief requested by Havens. Were “ifs” and “buts” chocolates and nuts, we all would live in a candy factory. That is not the case, and the Commission must deal with the facts and the application processing stream as it occurs.

¹⁴ See Petition at 6, n.9.

¹⁵ Petition at 6, n.10.

Havens further asks for immediate processing of his Boulder station application.¹⁶ If this is truly a “fill-in” station, the Commission provided for fill-in stations in the Fourth R&O.¹⁷ However, Havens admits that the Boulder application does not merely replicate contours of other stations under applications, but rather “does cover somewhat further out from the sides of this river than provided for by the previously submitted . . . station applications . . .”¹⁸ This is precisely the circumstance covered by the Commission at paragraph 77 of the Fourth R&O and Third FNPRM. Not only has Havens provided no rationale for deviating from the freeze order, but further he has demonstrated the validity of the Commission’s action.¹⁹ Havens’ application would violate the basic premise of the freeze established by the Commission.

¹⁶ This appear to be another of those contrived “river system” applications, which in fact are intended to cover the metropolitan and ski areas of Colorado.

¹⁷ Fourth R&O at ¶ 11-12.

¹⁸ Petition at 14, n.19.

¹⁹ Exempted from the freeze are applications that propose neither to expand a station’s service area or to obtain additional spectrum. *Id.* at ¶ 77. Stations which do not expand a service area include modification that expands an AMTS or system’s contour over water *only*. *Id.* at n.265.

WHEREFORE, THE PREMISE CONSIDERED, Regionet Wireless Licensee LLC respectfully urges the Federal Communications Commission to Deny the Petition for Reconsideration or Waiver of Warren C. Havens with regard to processing of AMTS applications subject to Commission's freeze order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Martin W. Bercovici". The signature is fluid and cursive, with a large initial "M" and a trailing flourish.

Martin W. Bercovici
Keller and Heckman LLP
1001 G Street, N.W., Suite 500 West
Washington, DC 20001
(202) 434-4144

Attorney for Regionet Wireless Licensee LLC

January 18, 2000

CERTIFICATE OF SERVICE

I, Carolina Moore, a secretary at the law firm of Keller and Heckman LLP, certify that I have, on this 18th day of January, caused to be delivered by first class mail, postage prepaid (or by Hand if so indicated), a copy of the foregoing Opposition of Regionet Wireless Licensee LLC to Petition of Warren C. Havens for Reconsideration or Waiver of Interim Order Regarding Suspension of Processing of Applications:

Warren C. Havens
2509 Stuart Street
Berkeley, CA 94705

Michele Farquhar
Ronnie London
Hogan & Hartson
555 13th Street, NW
Washington, DC 20004-1109

Mr. Scott Stone
Deputy Chief, Policy and Rules Branch (By Hand)
Public Safety and Private Wireless Division
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

D'wana Terry, Esq. (By Hand)
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street SW-Room 4-C321
Washington, DC 20554


